

Patent
USSN 09/541,351
Old Atty Docket 20060
New Atty Docket VMED-40004

REMARKS

Claims 1-29, 31, 32 and 34 are pending. In the Office Action dated 4/29/2009 ("Office Action"), claims 5, 6, 28, 29, 31, 32 and 34 are rejected and Claims 19 is objected to. In view of the amendments set forth above and the comments set forth below, it is submitted all Claims are in condition for allowance.

Written Consent

The Office Action objects to the application as lacking written consent of all assignees under 37 CFR 1.172. Applicants are submitting herewith a statement under 37 CFR 3.73(b) in compliance with 37 CFR 1.172. With this submission, the requirements of 37 CFR 1.172 have been satisfied, and it is respectfully requested that this objection be withdrawn.

Statement of Error

The Examiner objected to the previously-submitted Statement of Error because the described error was not an error upon which a reissue can be based. Submitted herewith is an amended statement of error describing an error on which a reissue can be based in accordance with 37 CFR 1.175(a)(1). Therefore, it is requested that this objection be withdrawn.

Reissue Oath/Declaration

The Examiner objected to the oath/declaration filed with the application because none of the errors which were relied upon to support the reissue were errors upon which a reissue could be based. As stated above, a new statement of errors and oath/declaration are submitted herewith. The statement of errors is in compliance with the requirements of 37 CFR 1.175(a)(1), and it is therefore requested that this objection be withdrawn.

Drawings

The Examiner objected to the drawings as failing to comply with 37 CFR

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1.84(p)(5) because they do not include element 414. The reference to element 414 is a typographical error and has been changed in the amendment set forth above to reference element 27, which designates the EEPROM of FIG. 1. With this change, the drawing are in accordance with 37 CFR 1.84(p)(5), and it is requested that this objection to the drawings be withdrawn.

The Examiner further rejected to the drawing because Claims 28, 29 and 31 recite mode selection means in one of the transmitting unit or the receiving unit. It is asserted that such means are not located in the receiving unit, and therefore the drawings do not show every feature of the invention of the claims. Applicants do not agree with this assessment. In regards to mode selection means within the receiving unit 14, Applicants' Specification clearly recites:

"[t]he implanted receiver 14 of FIG. 1 can be programmed by the physician or patient to obtain it's operating power from one of three sources: 1) RF coupled energy only; 2) back-up rechargeable power supply/source 44 only; or 3) a combination of both whereby the implanted receiver 14 alternates automatically from one to the other according to a preset schedule programmed via the transmitter 12." (U.S. Patent No. 5,733,313, hereinafter the '313 patent, column 8 lines 1-5, emphasis added.)

Applicants' Specification further describes that based on the manner in which the microcontroller 46 within the receiver is programmed, a corresponding mode is selected by circuitry within the receiver 14 as follows:

"When 'RF only' is selected...an output port 45 of a microcontroller 46 in the receiver 14 is switched to a "0" and a port 47 is switched to a "1" which places pmos transistor P2 in a conducting state and pmos transistor P1 in a non-conducting state. This effectively connects a line conductor 50 to a line conductor 52, making VDD equal to the output of a voltage regulator 54 which is at +3.0 vdc. When 'battery only' is selected...the output port 47 is switched to a "0" and the port 45 is switched to a "1", thus effectively connecting line conductor 56 to line conductor 52 and making VDD equal to the voltage level at the rechargeable power source 44....when 'combination' is selected...the system 10 will automatically switch the source of VDD to the output of the voltage regulator 54 (line conductor 50) when the transmitter 12 is proximal to the receiver 14..." ('313 patent column 8 lines 8-30.)

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Moreover, when the receiver 14 is programmed in a mode that receives RF power from the transmitter, the power can be used to simultaneously operate the implanted device and recharge the rechargeable power source, as required by mode selection means element a.) of Claims 28, 29 and 31. (See, for example, '313 patent column 9 lines 25-26.)

The foregoing passages clearly disclose that the receiver 14 has both a programmable microcontroller 46 and various elements shown in at least FIGs. 3-6 that include ports 47 and 48 and transistors that can be controlled to select any mode of operation of the receiver recited by Claim 28. Such circuits clearly perform the function recited by the language of Claim 28, 29 and 31 of "mode selection means ...for controlling the supply of power in one of several modes of operation...."

While Applicants do not agree with the Examiner's assertion, in the spirit of cooperation, and to further prosecution, Applicants' have removed the reference to mode selection means being in the receiving unit from Claims 28, 29 and 31. With this amendment to the Claims, this objection is rendered moot, and the objection to the Drawings should be withdrawn.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. In particular, it is said that the reference in claim 19 to the transmitting unit not being dependent upon an A.C. power source must be supported.

Claim 19 was included with the originally-filed claim set filed on August 1, 1996 in application serial number 690,968, which eventually issued as patent number 5,733,313. As originally-filed, this claim recited "[t]he system of claim 1 wherein said transmitting unit has a self contained power supply, such as a battery, whereby said transmitting unit is portable and not dependant upon an a.c. power source." The claims are part of the originally-filed specification (see MPEP 608.01(I)), and as such, Applicants are entitled to include this subject matter in the

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body of the specification. The drawings as originally filed clearly show the elements recited by original Claim 19, including battery 62 of transmitting unit 12 (see, for example, FIG.1 and column 9 lines 30-38 of the '313 patent.) This subject matter from original Claim 19 is added to the body of the specification in the amendment submitted above. With this amendment to the specification, the specification and drawings provide antecedent basis for current claim 19, and this rejection should be withdrawn.

Claim Objections

Claim 19 was objected to because the word "dependant" is misspelled, and should instead be "dependent". This Claim has been amended to correct this misspelling in the amendment set forth above, and it is requested that this objection be withdrawn.

Claim Rejections under 35 USC §112

Claims 5 and 6 were rejected under 35 USC §112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention because these claims include parenthetically subject matter. In the amendment submitted above, the parenthesis have been deleted, and it is therefore requested that this rejection be withdrawn.

Further, Claims 28, 29, 31, 32 and 34 were rejected under 35 USC §112 as failing to comply with the written description requirement. It is said that the specification does not refer to mode selection means as being provided by the receiver. As discussed above in regards to the objection of the drawings, the discussion of which is incorporated here in its entirety, the specification does clearly describe, and the drawings do show, means for selecting the mode of operation within the receiver. In fact, if such means were not present in the receiver, the receiver could not be configured in any one of several selectable modes. However, in the spirit of cooperation, and to further prosecution, the

Statement of Errors

Applicants believe the original patent to be partly inoperative because Applicants claimed less than they were entitled to by claiming first control means in the transmitting unit of Claim 23. This error of omission arose without any deceptive intention by applicants.